

# **Washington State Office of Public Defense AGENCY STRATEGIC PLAN**

## **OVERVIEW**

The Office of Public Defense (OPD) is an independent agency of the judicial branch.

OPD works under the supervision and direction of the Office of Public Defense Advisory Committee to develop and administer programs. The Advisory Committee includes members appointed by the Chief Justice of the Washington State Supreme Court, the Governor, the Court of Appeals, and the Washington State Bar Association, in addition to two Senators and two Representatives selected from each of the two largest caucuses by the President of the Senate and Speaker of the House of Representatives, respectively.

OPD administers state funds appropriated for parents in dependency and termination cases, appellate indigent defense services, trial level indigent defense services in criminal cases, and consulting services for county and city officials on public defense contracts and other public defense issues.

## **AGENCY MISSION**

The Office of Public Defense's duties are to implement the constitutional guarantee of counsel and to ensure the effective and efficient delivery of indigent appellate services.

## **STATUTORY AUTHORITY**

The Office of Public Defense's enabling statute is RCW 2.70 et. seq. Legislative authority for the Extraordinary Criminal Justice Costs program is RCW 43.330.190.

## **GOALS**

Implement the guarantee of counsel. Fulfill Senate Bill 5454 by setting up services to improve public defense in counties.

Ensure the efficient and effective delivery of indigent services in appellate courts.

Ensure the constitutional guarantee of counsel and the adequacy of representation for parents in dependency and termination cases.

Implement improvements in adequate criminal defense representation in the trial courts.

## **OBJECTIVES**

Implement the constitutional guarantee of counsel by working with the trial and appellate courts to enhance indigent defense.

Maintain appropriate, high quality appellate attorney and costs payment systems, gather statistics, and issue reports to the Legislature and the Supreme Court in each fiscal year.

Improve parents' representation in dependency and termination cases.

Support the improvement of the state trial court indigent defense system under House Bill 1542.

Maintain the Extraordinary Criminal Justice Costs Act petition and priority process and submit prioritized lists to the Legislature in each fiscal year.

## **STRATEGIES**

- Work under the supervision and direction of the Office of Public Defense Advisory Committee to develop and administer programs.
- Maintain an appellate attorney appointment system mandated by a Supreme Court amendment to Rules of Appellate Procedure 15.2.
- Coordinate with the Supreme Court, the judges of each division of the Court of Appeals, the superior courts, and appellate attorneys to implement appellate indigent defense representation and to enhance the effectiveness of the representation.
- Pay attorney fees and costs for appellate indigent defense cases. Work with courts and attorneys to implement efficiencies in providing OPD services.
- Work with the courts, bar associations, attorneys, and other interested parties to improve the quality of trial level indigent defense. Implement the processes of House Bill 1542 for trial level indigent defense as funding is appropriated.
- Maintain statistics on all appellate and parents representation cases funded through the state and submit annual reports to the Legislature and the Supreme Court.
- Distribute and process county petitions to claim reimbursement for aggravated murder cases, and prepare a prioritized list and submit it to the Legislature.
- Pursue full state funding to continue improvement of parents' representation in dependency and termination cases on a statewide basis.
- Maintain appropriate pay rates for all appointed indigent defense attorneys for appeals and maintain resources to support them.

- Implement the mandate in House Bill 1542 by developing a petition, auditing county applications, and distributing funds.

## **FINANCIAL OUTLOOK**

In 2004, the substandard quality of trial level indigent defense in a large number of Washington counties was the subject of a *Seattle Times* series, “Unequal Justice”; a WSBA Report by the Blue Ribbon Task Force on Indigent Defense; an ACLU report entitled “The Unfulfilled Promise of Gideon”; and a lawsuit against Grant County for failure to provide adequate indigent defense services. The Board for Judicial Administration adopted a recommendation that 100% of indigent defense services should be funded by the state. These reports and articles found that due to local under funding and high caseloads, many county-contracted public defense attorneys do not provide adequate counsel. In particular, they often fail to communicate with their clients, conduct investigations, or effect other required case preparation.

## **APPRAISAL OF EXTERNAL ENVIRONMENT/TRENDS IN CUSTOMER CHARACTERISTICS**

### *Indigent Appellate Defense*

Part of the Office of Public Defense budget funds indigent appellate costs, including reimbursement for services of court reporters, court clerks, and appointed counsel. Most of these funds are paid for attorneys’ fees.

In 2005, OPD implemented a new appellate attorney appointment system mandated by a Supreme Court amendment to Rules of Appellate Procedure 15.2. The rule establishes that the appellate courts will directly appoint indigent appellate counsel, using attorneys selected by OPD on a case-by-case basis.

OPD contracts with over 50 attorneys across the state, including three firms, to provide representation. The cases include criminal cases, as well as other cases involving basic rights such as criminal contempt convictions and involuntary civil commitments.

In general, appellate cases take from one to two years from filing to appellate court decision. Court reporter and court clerk costs are generally incurred at the beginning of the appellate case and paid within its first year. In contrast, attorney billing is more difficult to predict. OPD has a multiple-payment schedule that allows attorneys to bill as work is completed. The last two payments in each case, for filing the written brief and at the conclusion of the case, can occur sometime between six months and two years after the appeal is filed. In 2004, OPD instituted new payment policies to require vendors to promptly submit invoices for payments.

The levels of indigent appellate case filings continue to fluctuate from month to month. The new appointment system will help OPD track case filings better.

Appellate death penalty cases present the highest-cost indigent appellate defense. There are two death penalty appeals currently under consideration by the Supreme Court and one recent

decision, making it likely that at least three personal restraint petitions cases (the second stage appellate-level death penalty action available to defendants) will be brought during the 2007-09 Biennium. There is currently one personal restraint petition filed in the Supreme Court. In addition, several new death penalty charge notices are currently being considered at the trial level.

#### Parents' Representation Program

The program began in Fiscal Year 2001 when the Legislature assigned OPD a pilot program to implement enhanced representation for parents in dependency and termination proceedings. Since that time, OPD has worked to identify major problems in this area. OPD sets manageable caseload limits, implements professional standards of practice and provides access to expert and case support services, so that program attorneys can better assist their clients. This highly successful program is established in 13 counties throughout the state and is currently expanding into several additional counties. The results are beneficial to children and families and all parties involved in these cases.

The Legislature established five program goals to enhance the quality of defense representation in dependency and termination hearings:

1. Reduce the number of continuances requested by attorneys, including those based on their unavailability.
2. Set maximum caseload requirements cases per full-time attorney.
3. Enhance defense attorneys' practice standards, including reasonable time for case preparation and the delivery of adequate client advice.
4. Support the use of investigative and expert services in dependency cases.
5. Ensure implementation of indigency screenings of parents, guardians, and legal custodians.

Several independent evaluations have verified that the Parents Representation Program has succeeded in achieving the goals set forth. In addition, the outcomes for children and their families have substantially improved because parents are better able to address their parenting deficiencies. The program has also acted as a catalyst for court reform, allowing court scheduling improvements and encouraging better accountability of all the parties.

#### Trial Level Indigent Defense

The 2005 Legislature adopted two bills relating to indigent defense representation in the State of Washington - House Bill 1542 and Senate Bill 5454.

House Bill 1542 states "The legislature finds that effective representation must provide for indigent persons and persons who are indigent and able to contribute, consistent with the constitutional of fairness, equal protection, and due process in all cases where the right to counsel attaches," and mandates that OPD disburse funds to counties contingent on their implementation of improvements in their public defense services. The 2006 Legislature appropriated \$3 million for HB 1542. Funding is provided as an incentive for counties to meet public defense quality standards. Under the bill's requirements (codified as part of Chapter 10.101 RCW), counties may qualify for a percentage of the state funding under a program administered by OPD if the counties met the standards for public defense endorsed by the Washington State Bar Association or funding to make appreciable demonstrable improvements

in the delivery of public defense services. Such improvements must include the counties' adoption of standards addressing the factors set forth in RCW 10.101.030, as well as requiring training for public defenders, requiring that attorneys who handle the most serious cases meet specified qualifications, providing special compensation in extraordinary cases, and providing funding exclusive of attorneys' compensation for experts, investigators, and conflict cases. The bill also provides for a grant program to improve public defense in up to five cities.

Senate Bill 5454 states "The legislature recognizes the state's obligation to provide adequate representation to criminal indigent defendants and to parents in dependency and termination cases." Under the bill, OPD has set up several services to improve public defense in the counties.

OPD also provides consulting services for county and city officials on public defense contracts and other public defense issues. These include regional trainings, resource attorneys, and pilot programs.

#### Extraordinary Criminal Justice Costs

RCW 43.330.190 gives OPD the duty to create, distribute, and process county petitions for reimbursement of aggravated murder funds. In consultation with the Washington Association of Prosecuting Attorneys (WAPA) and the Washington Association of Sheriffs and Police Chiefs (WASPC), OPD develops a prioritized list and submits it to the Legislature at the beginning of each legislative session. Four counties petitioned for reimbursement of their 2005 expenses.

### **CONCLUSION**

OPD has executed a number of important programs that implement the constitutional guarantee of counsel and ensure the effective and efficient delivery of the indigent services funded by the state and will require increased funding to deliver these services on a statewide basis.